



Entered on Docket  
March 26, 2007

Hon. Linda B. Riegler  
United States Bankruptcy Judge

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Attorneys for Fertitta Enterprises, Inc.,  
Designated NV counsel for Estate of Tabas

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
Debtor.

USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

USA SECURITIES, LLC,  
Debtor.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

Chapter 11

**ORDER ON ESTATE OF DANIEL  
TABAS' AND FERTITTA  
ENTERPRISES, INC.'S MOTION  
FOR RELIEF FROM THE  
AUTOMATIC STAY TO  
TERMINATE THE LOAN  
SERVICING AGREEMENT FOR  
THE DIRECT LOAN TO COLT  
GATEWAY LLC**

Hearing Date: 2/15/07  
Hearing Time: 9:30 a.m.

Fertitta Enterprises, Inc., and Estate of Tabas, by and through their attorneys, on January,

RECEIVED BY EMAIL

MAR 27 2007

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1 17, 2007, filed their motion to obtain relief from the automatic stay, pursuant to Fed. R. Bankr. P.  
 2 9013 and 11 U.S.C. § 362(d) ("Motion"), in order to terminate the loan servicing agreement for  
 3 the Colt Gateway Loan (Ct. Dkt. #2457), and supported by the declaration of William J. Bullard  
 4 (Ct. Dkt. #2459). On February 5, 2007, Debtors USA Commercial Mortgage Company  
 5 ("USACM") and USA Capital Diversified Trust Deed Fund ("Diversified"), LLC filed an  
 6 opposition (Ct. Dkt. #2696), supported by the declaration of Thomas J. Allison (Ct. Dkt. #2697).  
 7 On February 7, 2007, the Official Committee of Unsecured Creditors for USA Commercial  
 8 Mortgage Company joined the opposition (Ct. Dkt. #2706). On February 12, 2007, movants filed  
 9 their reply (Ct. Dkt. #2742), supported by the declaration of Janet L. Chubb (Ct. Dkt. #2743).

10 On February 15, 2007, this Court held a hearing on the Motion, with appearances and  
 11 arguments by counsel for the movants, debtors, and official creditors committees. The Court  
 12 having considered the pleadings and papers on file and the arguments of counsel, and good cause  
 13 appearing,

14 **IT IS HEREBY ORDERED** that the hearing on the Motion is continued to 9:30 a.m. on  
 15 March 1, 2007, at which time the Court will conduct a status hearing; and

16 **IT IS FURTHER ORDERED** that on or before February 27, 2007, USACM shall file a  
 17 motion for approval of a settlement with borrower on the Colt Gateway loan and seek instructions  
 18 regarding the distribution of the settlement funds, or commence foreclosure proceedings with  
 19 respect to such loan; and

20 **IT IS FURTHER ORDERED** that if USACM has satisfied neither of the Conditions on  
 21 or before February 27, 2007, then on February 28, 2007, the automatic stay shall be terminated to  
 22 without further order of the Court, and Fertitta Enterprises, Inc., the Estate of Tabas, and  
 23 Diversified may to proceed with their remedies regarding servicing and/or collection of the Colt  
 24 Gateway loan; and

25 ///

26 ///

27 ///

28

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1 **IT IS FURTHER ORDERED** that if either of the Conditions is satisfied on or before  
2 February 27, 2007, then the Court will conduct an evidentiary hearing on the Motion at 9:30 a.m.  
3 on March 15, 2007.

4 Prepared and Submitted by:

5 JONES VARGAS

6 By: //s// Louis M. Bubala III  
7 LOUIS M. BUBALA III  
8 Attorneys for Fertitta Enterprises, Inc. &  
Designated NV Counsel for Estate of Tabas

9 APPROVED/DISAPPROVED:

10 RAY QUINNEY & NEBEKER, P.C.

11 ANNETTE W. JARVIS  
12 Counsel for Debtors

13 APPROVED/DISAPPROVED:

14 ORRICK HERRINGTON & SUTCLIFFE LLP

15 MARC A. LEVINSON  
16 Counsel for Official Committee of Equity  
17 Security Holders of USA Capital Diversified  
18 Trust Deed Fund, LLC

19 APPROVED/DISAPPROVED:

20 STUTMAN, TREISTER & GLATT

21 FRANK MEROLA  
22 CHRISTINE PAJAK  
23 Counsel for Official Committee of Equity  
Security Holders of USA Capital First  
Trust Deed Fund, LLC

24 ALTERNATIVE METHOD re Rule 9021:

25      The court has waived the requirement of approval under LR 9021.

26      No parties appeared or filed written objections, and there is no trustee appointed in  
27 this case.

28   x   I have delivered a copy of this proposed order to all counsel who appeared at the  
hearing, and unrepresented parties who appeared at the hearing, and any trustee appointed

APPROVED/DISAPPROVED:

OFFICE OF THE U.S. TRUSTEE

AUGUST B. LANDIS  
Assistant U.S. Trustee

APPROVED/DISAPPROVED:

LEWIS AND ROCA LLP

SUSAN M. FREEMAN  
ROB CHARLES  
Counsel for Official Committee of Unsecured  
Creditors for USA Commercial Mortgage  
Company

APPROVED/DISAPPROVED:

GORDON & SILVER, LTD.

GERALD M. GORDON  
GREGORY E. GARMAN  
Counsel for Official Committee of Executory  
Contract Holders of USA Commercial  
Mortgage Company

1 in this case, and each has approved or disapproved the order, or failed to respond, as  
2 indicated below:

3 **Debtors:** Asked that the proposed order be amended to state that USACM has to file a  
4 motion relating to the payoff of the loans (or file a notice of default by February 27) and  
not specify what kind of motion.

5 **Office of the U.S. Trustee:** Agreed with the DTDF's response, to submit a competing  
6 form of the order with DTDF's proposed language should the parties not reach an  
agreement to resolve the Colt Gateway loan.

7 **Official Committee of Equity Security Holders of USA Capital Diversified Trust**  
8 **Deed Fund, LLC:** In response to the first version of the proposed order served on all  
9 parties on February 16, 2007, this Committee proposed that the second term of the order  
read:

10 **IT IS FURTHER ORDERED** that on or before February 27, 2007,  
11 USACM shall file a motion seeking authority from the Bankruptcy Court in  
12 connection with a payoff proposal from the borrower on the Colt Gateway  
loan, or commence foreclosure proceedings with respect to such loan  
(collectively, the "Conditions");

13 In response to this proposed order served upon it via email on February 20, 2007, and in  
14 light of ongoing negotiations on the Colt Gateway loan, proposed to submit a competing  
15 form of the order with its proposed language should the parties not reach an agreement to  
16 resolve the Colt Gateway loan. This proposed order incorporates all other changes  
17 requested by this Committee in response to the first version of the proposed order served  
18 on all parties on February 16, 2007.

19 **Official Committee of Unsecured Creditors for USA Commercial Mortgage**  
20 **Company:** Failed to respond to the proposed order served upon it via email on February  
21 20, 2007. In response to the first version of the proposed order served on all parties on  
22 February 16, 2007, this Committee stated that it did not believe the court required a  
23 settlement by February 27, 2007, but required a motion "with respect to the payoff to get  
24 this dispute before the court and the money coming in." This Committee responded that  
the other changes proposed by the DTDF Committee to the first version of the proposed  
order are "fine."

25 **Official Committee of Equity Security Holders of USA Capital First Trust Deed**  
26 **Fund, LLC:** Responded that it did not recall the court's oral order used the term  
27 "settlement" to describe the type of motion it instructed USACM to file.

28 **Official Committee of Executory Contract Holders of USA Commercial Mortgage**  
**Company:** Failed to respond to the proposed order served upon it via email on February  
20, 2007, or to a first version of the proposed order served via email on February 16, 2007.

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